no merit in it because when the Director General exercises his powers under section 91(1) and imposes the additional assessment for twelve years the same provisions under section 103 for payment of tax is applicable and there is no distinction between the assessments being for one year or for twelve years. Again I see no merit in the argument that the certificate under section 142(1) cannot be given because there is no finality. Under section 106 tax due and payable may be recovered by the Government by civil proceedings as a debt due to the Government and in a suit under section 106 the production of a certificate signed by the Director General giving the name and address of the defendant and the amount of tax due from him shall be sufficient evidence of the amount so due and sufficient authority for the court to give judgment for that amount.

In this case after the Notices of Assessment were served and the tax was not paid the Government instituted proceedings for the whole tax payable. The court under section 106(3) cannot entertain any plea that the tax or additional tax was not correctly assessed. In the case of *A.B.C.* v. *The Comptroller of Income Tax, Singapore*[1] it was held that notices of assessment for several years were valid. Regarding the question whether triable issues or objections to the tax entitled the defendant to leave to defend I only need to refer to the recent Federal Court decision in *Sun Man Tobacco Co. Ltd.* v. *Government of Malaysia*[2] where it was held that the court was right in giving leave to the Government to sign final judgment and in holding that if the taxpayer wished to dispute that the amount of tax sought to be recovered was excessive, incorrectly assessed, under appeal or incorrectly increased, he had to do so by way of appeal to the Special Commissioners.

In the circumstances the appeal will be dismissed and the leave to sign final judgment confirmed with costs.

I hereby certify that I do not require any further argument.

Appeal dismissed.

Solicitors: *Gibb & Co.*

POOMANI v. ASSOCIATED FINANCE CORPORATION SDN. BHD.

[O.C.J. (Wan Hamzah J.) November 26, 1974]
[Ipoh — Civil Suit No. 752 of 1968]

Contract — Advance of money to third party which benefits party — Right to recover money — Retention of title deeds — Equitable assignees of mortgage — National Land Code, s. 281.

Land Law — Retention of title deeds for purpose of creation of lien — Equitable assignee — National Land Code, s. 281 — Contracts Act, 1950, s. 71.

In this case the facts were that the defendants had advanced $7,000 to the plaintiff and the plaintiff thereupon paid off her loan to the Malaya Borneo Building Society Ltd. and discharged her land from the charge to the society. The plaintiff and the defendants executed a memorandum of agreement purportedly pursuant to the Moneylenders Ordinance and the plaintiff also executed a charge of the land to the defendants. The title deeds of the land were handed over to the defendants. The defendants had originally applied for an order for the sale of the lands to recover the loan. Subsequently, the plaintiff brought the action against the defendants for a declaration that the memorandum of agreement and the charge were unenforceable and also prayed for the delivery of the title deeds to her. The defendants in their defence denied that the agreement and charge were unenforceable and further claimed that they were entitled to retain the title deeds until repayment of the sum of $7,000. In an earlier hearing ([1972] 1 M.L.J. 117) it was held that the memorandum of agreement and the charge were unenforceable.

Held: (1) as the plaintiff had benefited by the advance of the $7,000 and the defendants had not intended to make the advance gratuitously, the defendants were entitled to recover the sum by virtue of section 71 of the Contracts Act, 1950; 1950;

(2) the defendants were entitled to possession of the title deeds for the purpose of the creation of a lien under section 281 of the National Land Code;

(3) since the money had been advanced by the defendants to pay off the money lent by the society as mortgagees, the defendants have become equitable assignees of the mortgage and were entitled to have the mortgage kept alive for their benefit and to enforce the mortgagee's rights thereunder.

Case referred to:-

(1) *Coptic Ltd.* v. *Bailey & Anor.* [1972] 1 All E.R. 1242.

CIVIL SUIT.

J. R. Devadas for the plaintiff.

W. S. W. Davidson for the defendants.

Wan Hamzah J.: The plaintiff charged her land lot No. 3713N, Town of Ipoh, held under Certificate of Title No. 29348, to the Malaya Borneo Building Society Limited (hereinafter referred to as the society) to secure repayment of a loan of money. It is not clear for what purpose the plaintiff borrowed the money or whether she used it to pay the cost of the property, but memorials on the Certificate of Title show that the land was transferred to the plaintiff and the transfer was registered on the same day (i.e. 2 September 1964) as the registration of her charge to the society. When the society called for repayment the plaintiff's husband on her behalf approached the defendants (who were licensed moneylenders) for a loan of $7,000 to settle with the society.

On 6 September 1967 a sum of $7,000 was forwarded by the defendants' solicitors to the plaintiff's then solicitors. On 11 October 1967 the said sum was paid by the plaintiff's then solicitors to the society as repayment of the loan obtained by the plaintiff from the society. The land was discharged and the discharge was registered on 17 October 1967. The plaintiff and the defendants executed a memorandum of agreement dated 2 October 1967 purportedly pursuant to the Moneylender's Ordinance 1951, and also a charge of the land dated 2 October 1967 to secure repayment of the loan of $7,000 and interest. The charge by the plaintiff to the defendants was registered on 17 October 1967. Since then the title deed for the land has been in the possession of the defendants.

By Originating Summons No. 723/1968 dated 28 September 1968 the defendants applied to the court for an order of sale of the land under sections 256 and 257 of the National Land Code to recover the loan and the plaintiff resisted the application contending that the memorandum of agreement and the charge were unenforceable because of certain facts which she alleged in her affidavit. On 18 December 1968 the

plaintiff brought this suit against the defendants for a declaration that the memorandum of agreement and the charge are unenforceable by reason of the same facts which she alleged as her ground for opposing the defendants' application for order of sale in Originating Summons No. 723/1968. In this suit the plaintiff also prays for an order for the delivery of the title deed for the land by the defendants to her. In their Statement of Defence the defendants deny that the agreement and the charge are unenforceable. Further the defendants allege that the plaintiff has refused to pay to the defendants the sum of $7,000 advanced by them to the society for and on behalf of her, and they contend that therefore they are entitled to retain the title deed for a lien in respect of that sum. They allege that they lawfully advanced that sum to the society on behalf of the plaintiff and at her request, and did not intend to do so gratuitously, and the plaintiff has benefitted therefrom in that the loan due from her to the society and the charge over the title deed securing the repayment of the loan has been discharged. Further, or in the alternative, the defendants allege that the plaintiff having made use of the money advanced on her behalf by the defendants and having refused to repay it, has unjustly enriched herself at the expense of the defendants. Accordingly the defendants make a counterclaim for the repayment of the sum of $7,000 with reasonable interest thereon and for a declaration that the defendants are entitled to a lien over the title deed under section 281 of the National Land Code and further or alternatively at common law or in equity, until repayment by the plaintiff to them of the sum of $7,000.

Originating Summons No. 723/1968 came up for hearing before Pawan Ahmad J. At that hearing the parties agreed to a list of issues to be tried. Included in the list of issues is the question whether the memorandum of agreement dated 2 October 1967 executed by the parties and the charge dated 2 October 1967 executed by them, are unenforceable. In fact this was the main issue at that trial. On 27 October 1971 Pawan Ahmad J. delivered his judgment and dismissed the defendants' application. The judgment is reported in [1972] 1 M.L.J. 117. It was held by Pawan Ahmad J. that the memorandum of agreement was unenforceable. It follows, therefore, that the charge was also unenforceable. There was no appeal against the judgment. Therefore when this suit came up for hearing before me the issue whether the memorandum of agreement and the charge are enforceable has been *res judicata*, and there remain to be tried only the following two issues: —

(a) whether notwithstanding the fact that the memorandum of agreement and the charge are unenforceable, under the circumstances of this case the defendants are entitled under the law to claim payment from the plaintiff the sum of $7,000 which they had advanced for her benefit; and

(b) whether the defendants are entitled to a lien over the title deed.

These two issues were not included in the list of issues in Originating Summons No. 723/1968 to which I referred earlier.

Neither in her pleading nor by evidence did the plaintiff deny that she had been benefitted by the defendants' grant of the advance of the money which was subsequently paid to the society, or that the defendants had not intended to give the advance gratuitously. There is no doubt that she had been benefitted by it and that the defendants had not intended to make the advance gratuitously. I believe that this is a case to which section 71 of the Contracts Act, 1950 applies. The section reads:

> "Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."

Therefore the defendants succeed in their counterclaim for payments of the sum. I further hold that the defendants are entitled to possession of the title deed for the purpose of creation of a lien under section 281 of the National Land Code. Subsection (1) of that section reads:

> "Any proprietor or lessee for the time being may deposit with any other person or body, as security for a loan, his issue document of title or, as the case may be, duplicate lease; and that person or body —
>
> (a) may thereupon apply under Chapter I of Part Nineteen for the entry of a lien-holder's caveat; and
>
> (b) shall, upon the entry of such a caveat, become entitled to a lien over the land or lease."

From the evidence I have no doubt that the plaintiff as proprietor had deposited (or caused to be deposited) the title deed with the defendants, and while she did so she intended it to be a security for the repayment of the sum advanced by the defendants. In my opinion "loan" in that section includes any sum which the proprietor has to repay such as the sum advanced by the defendants in this case.

I think the defendants should succeed also on a ground in equity. Since the money had been advanced by the defendants in order to pay off the money lent by the society as mortgagees, the defendants have become equitable assignees of the mortgagees and therefore are entitled to have the mortgage kept alive for their benefit and to enforce the mortgagees' rights thereunder. For this view support can be found in the judgment in the case of *Coptic Ltd.* v. *Bailey and Another*.[1]

I dismiss the plaintiff's claim with costs.

On the counterclaim I give judgment for the defendants in the sum of $7,000 with interest thereon at 6% per annum from 6 September 1967 until date of judgment (less $770 interest already paid), and costs.

Claim dismissed.

Counterclaim allowed.

Solicitors: *J. R. Devadas; Lewis & Co.*